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ON CORRELATION AND INTERRELATION OF CONCEPTUAL APPARATUSES OF THE CRIMINAL CYCLE SCIENCES

Abstract*. The paper deals with the issues of correlation and interrelation of conceptual apparatuses of criminal cycle sciences: criminal, criminal procedural, criminal enforcement law, criminology, forensic science, etc., based on methods of differentiation and integration of sciences. The method of differentiation enables us to divide the corresponding branches of knowledge into certain groups and to consider them as independent sciences; the method of integration illuminates the processes of convergence and interaction of sciences, their interpenetration on the level of separate elements of conceptual apparatuses: legal categories, concepts of legal terminology. We distinguish a class of «interdisciplinary» categories of notions and terms, which are the subject of criminal law science and are used by all sciences of the criminal cycle. The rationale is given for the necessity of their interpretation in all cases on the basis of the content and volume enshrined in them mainly by criminal law science. Other categories, concepts, and terms that are the subject of the applied sciences of the criminal cycle should be considered in all cases of their use, based on the interpretations provided by the relevant science that develops them.*

Key words: *conceptual apparatus of sciences of the criminal cycle, legal categories, legal concepts, legal terminology, differentiation of sciences, integration of sciences, interdisciplinary categories, concepts, terms.*

Subject topicality. The problem of conceptual apparatuses of sciences of a criminal cycle, especially their correlation and interrelation, is underdeveloped. Meanwhile, the literature argues that the same legal categories, concepts, and terms that make up the content of the conceptual apparatus of most (or all) sciences of the criminal cycle should be interpreted in a different way and each of these sciences can develop «own» categories, concepts and terminology.

This approach – albeit too controversial – is significant both for legal science and for solving practical issues in lawmaking and law enforcement. These circumstances led to the selection of the theme of correlation and interrelation of the conceptual apparatus of the criminal cycle sciences.

The aim of the article is to investigate the correlation and interrelation of conceptual apparatuses of criminal cycle sciences on the level of legal categories, notions and legal terminology, to develop and justify the rules of interpretation of the same («interdisciplinary») categories, concepts and terms used by different criminal cycle sciences and branches of legislation.

The criminal cycle (block) sciences in the literature include criminal law, criminal procedure law, criminal enforcement law, criminology, forensic science, and others. (1, p. 77–79). These legal sciences are united mainly by the only generalized subject-pragmatic problem concerned – the problem of combating crime, founded on the intersectoral fundamental scientific basis – «general theory of combating crime», which substantiates a specific and very important complex approach to the activities of state and society in this extremely important area (2, pp. 170–223). However, each of these sciences has significant differences from the others, which can be traced at different levels – at the level of research subjects, content, tasks, volume and limits of the sciences, their conceptual apparatus, etc. The basis of this approach is the *method of differentiation of sciences* (from the lat. differentia – division, dissection of the whole into qualitatively different parts), which is fundamental in science when dividing scientific knowledge into certain groups (types) and dividing certain types of sciences (3, p.241). The application of this method gives grounds to state that scientific knowledge in the field of the criminal cycle (criminal law, criminal procedure law, criminology, forensic science, etc.) is a group of independent, relatively isolated areas of knowledge, which, from the standpoint of their disciplinary organization, should be recognized as independent sciences.

Notional apparatuses of these sciences play a special role in the differentiation of criminal cycle sciences. The term «conceptual apparatus of science» represents a collective concept, the structure of which includes its constituent elements: legal categories, concepts, and legal terminology, which constitute closely related and interacting legal logical-linguistic entities, determined by the subject of the corresponding science (4, P. 205–222).

The development of a system of categories, concepts and legal terminology, the clarification of their interrelation and interaction and, at the same time, their relative isolation, the establishment of integrative links with the conceptual apparatus of related branches of knowledge are the most important tasks and functions of each of the legal sciences. The more perfect their conceptual apparatuses, the more developed are the categories, concepts, and corresponding terminology, the more thoroughly clarified their interrelation and correlation with

the system of elements of conceptual apparatuses of other sciences, the more perfect is the scientific «toolkit» of the corresponding science and its disciplinary organization, the more fully and accurately reflects the essence of the phenomena of objective reality, which allows to master these phenomena more successfully and positively influence them (5, P. 3–8).

Accordingly, each of the sciences of the criminal cycle in its content has a system of categories, notions, and terms, which are objectively determined by the historically established subject of science and belonging directly to this science. Thus, in criminal law, these can include, for example, the categories of «crime», «elements of crime», «criminal liability», «guilt», «subject of crime», «punishment», some concepts of specific crimes provided for by the norms of the Special Part of the Criminal Code, etc.; in criminology – «crime», «causes of crime», «conditions contributing to the commission of a crime», «prevention of crime», «personality of a criminal», etc. In criminal proceedings: «state prosecution,» «accused,» «pre-trial investigation,» «victim,» «sentence,» «criminal proceedings,» «evidence,» etc.; in criminal forensics: «forensic tactics,» «forensic technology,» «forensic identification,» «traceology,» «investigation tactics,» «methods of investigation of certain types of crimes,» etc. These categories, concepts, and terms in the system of other logical-linguistic elements of the said sciences, in their unity and interaction, form the conceptual apparatus of each of the sciences, which allows, in particular, to separate, differentiate and identify the corresponding branches of knowledge as independent sciences.

In addition to the differentiation of the sciences of the criminal cycle, their *integration* is also evident (from the lat. Integration – consolidation of separate parts into a whole), caused primarily by the fact that these sciences study separate aspects of one and the same common (generalized) object for them – crime and measures applied by the state and society in the struggle against it. The most complete and prominent integration processes are manifested in the fact that all these sciences quite often operate with the same categories, notions, and terms, such as «crime», «constituent elements of a crime», «socially dangerous act», «guilt», «motive», «goal», «mode of committing a crime», «punishment», and notions of specific elements of crimes: «murder», «theft», «robbery», «plunder», «rape», etc. Moreover, all sciences of the criminal cycle include these categories, notions, and terms in the content of their conceptual apparatus and are used as logical and legal tools for solving the tasks each of them faces. Therefore, categories, notions, and terms of this kind acquire the significance of «*interdisciplinary*» or «*intersectoral*». They certainly qualitatively supplement the system of categories, notions, and terms of each of the sciences of the criminal cycle, make their conceptual apparatuses more complete, capacious, logically finalized. Taking into account the fact that the mentioned «interdisciplinary» notions are used by all the mentioned sciences, they can be referred to as the

category of «regional» notions (6, P. 27).

Nevertheless, it should be noted that the majority of «interdisciplinary» categories, concepts and terms: «crime», «socially dangerous act», «corpus delicti», «guilt», «motive», etc. objectively reflect various aspects of such social and legal phenomena of social and legal reality as crime, punishment or criminal liability, which are the subject of research directly by the criminal law science (7, P. 539–543). Therefore, these elements of the conceptual apparatus are, first of all, the subject of criminal law science, which should be primarily engaged in their analysis and study of phenomena and processes of real life reflected by these concepts. And this does not mean that other sciences of the criminal cycle can not develop the said categories, concepts, and terms. The latter, as noted, in some cases, are also part of the conceptual apparatus of criminology, criminal procedure, forensics and other sciences of the criminal cycle and, consequently, can be the subject of their study, because, with the unity of the subject of study, different sciences can establish different tasks and solve them with different, specific methods, techniques and obtain different results.

But the extent and limits of the study and use of «interdisciplinary» categories, concepts and terminology by the said sciences, as well as the meaning of the conclusions of each of them for other related branches of knowledge, are quite uneven. This is explained by the fact that the mentioned sciences, being in close interrelation, at the same time are in different ways related to each other. The different relationships between these sciences are the result, in particular, of the fact that some of them are fundamental sciences while others are applied sciences. Jurisprudence is known to have a subdivision of sciences and branches of law on fundamental and applied sciences (8, P. 20–21; 9, P. 28–33). *Fundamental* sciences reveal the essence and patterns of development of the phenomena of the objective world and answer the question: «what is cognized?» And «how will it be discovered?» (8, P. 20–21; 9, P. 28–33). The *applied* sciences solve the problems of using the obtained scientific knowledge about the objective reality to solve specific practical problems and answer the question: «for what purpose it is learned?» (10, P. 45–53). Fundamental legal sciences are always primary, they serve as a framework for a group of other sciences (family of sciences), as they contain such a reference (constituent) logical and legal «material», which underlies the applied sciences. For this reason, the sciences that study the problem of fighting crime should obviously also be divided into fundamental and applied sciences.

It follows from the above that the basis of all the sciences of the criminal cycle is the science of criminal law, the task, and subject of which is the cognition of crime, punishment, criminal liability, criminal law as phenomena of social and legal reality, clarification of their essential features, legal forms of manifestation, development of measures concerning the correct application of the relevant legislation and its improvement, etc. Other sciences of this cycle, being in-

extricably linked with criminal law, have the purpose to ensure the implementation of the basic provisions and regulations that are developed by this fundamental science. Thus, the link between criminal law and criminology is inseparable, which is of genetic nature, since criminology as an independent branch of legal science has emerged from the criminal law, it is based on the developed science of criminal law problems of crime, the composition of specific crimes, punishment, measures to combat crime in general. Hence, criminal law is certainly a basic (fundamental and starting) science for criminology (11, P. 70, 12, P. 58–67). At the same time, criminology, in its turn, enriches criminal law with a wide range of knowledge about crime, its causes, the effectiveness of various social and preventive measures in combating it, etc. (13, P. 14–61). So there is a mutual real influence of each of the sciences on the other (interaction of sciences).

Substantive criminal law, which is the subject of study of the science of criminal law, is the regulatory framework for the emergence of criminal procedural relations. The latter, having their own meaning, serve as a legal form of establishing the existence of elements of a crime in the actions of a person found guilty of committing a socially dangerous act, as a mandatory condition of criminal liability and the imposition of an appropriate punishment, which is determined by the norms of criminal law. It follows that criminal procedural relations represent a form in which criminal legal relations are exercised (14, P. 106–107). On this basis, the question of the relationship between the norms of criminal law and criminal procedure, which has long been considered in legal science as a relationship of form and content in their dialectical unity, should also be solved: the same spirit should revive the judicial process and laws, because the process is only a form of law life, therefore, a manifestation of its inner being (15, P. 158). Therefore, substantive criminal law is the content of the corresponding criminal procedural form. The law of criminal procedure ensures the implementation of the norms of criminal law and therefore has an auxiliary, «proprietary» character in relation to the norms of substantive law (16, P. 84). It follows that the science of criminal procedure, the subject of which is the norms of criminal procedure law, while preserving the basic features of fundamentality, has an «auxiliary», «proprietary» nature in relation to the science of criminal law, and therefore in this ratio of sciences performs the functions of applied science.

Forensics is also closely interconnected with criminal law and process sciences. This relationship is also of a genetic nature, as forensic science originates primarily in the theory of criminal law and criminal process, where the formation of its foundations took place. The impact of substantive and procedural law is therefore extremely strong in forensics. The norms of criminal law, as noted by A. A. Piontkovskyi, – are of decisive importance for understanding the content of objective truth in criminal proceedings and the range of circumstances that should be established in

each specific case (17, P. 11). The concept of the elements of crime, which is central to the science of criminal law, is essential in the construction of methods of crime investigation. The attributes of specific elements ultimately determine the subject matter of an investigation in each case (18, P. 31). The relationship between criminology and the science of criminal proceedings is no less close. The data of procedural science, in particular, the general provisions of the theory of evidence, as indicated by G. M. Minkovskyi and A. R. Ratynov, are, of course, the starting points and determinants for the science that develops detailed recommendations for the collection and investigation of evidence (19, P. 147). Therefore, a number of provisions of forensics are based on the theory of the criminal process, for example, forensic tactics, recommendations on the investigation planning, execution of investigative actions, etc. The solution of questions of forensic techniques and tactics is impossible without the application and indispensable observance of the norms of criminal procedure, just as the application of most norms of criminal procedure requires a wide and optimal use of forensic knowledge. The most important task of forensics is to ensure the correct and precise application of criminal law and process norms. In this regard, it seems reasonable to assert that forensics is an applied science in relation to criminal law and criminal procedure and, consequently, in relation to criminal science and criminal procedure science (20, P. 87–89; 21, P. 20–23).

Therefore, the science of criminal law, combining the features of fundamental and applied knowledge, is a fundamental science in relation to criminology, criminal procedure, forensic science, and other related sciences, as well as a theoretical and normative basis for all sciences of the criminal cycle. Consequently, these sciences are not only in the relationship of *coordination*, but also in the relationship of subjugation, that is, *subordination*, and the determining value in their subordinate relationship is the science of criminal law. So, there are grounds to assert that in cases when other criminal law sciences of the criminal cycle use the provisions of the criminal law science, the latter, while developing matters arising from the subject of their study, and at the same time relate to the criminal law, and must proceed from the basic provisions of theoretical developments of the criminal law science. With regard to the question under consideration, this means that these sciences, using categories, concepts, and terminology developed by the criminal law science and belonging to the class of «interdisciplinary», use them generally as data. Thus, the categories (cardinal concepts) «crime», «elements of a crime», «guilt», «complicity in a crime», «subject of a crime», «unfinished crime», etc., the wording of certain elements of crime in criminology, as indicated by M. I. Kovalyov, draws from the criminal legislation and criminal law theory and cannot interpret them arbitrarily (22, P. 58). The criminal-legal theory and the criminal law based on it, O. M. Dzhuzha considers, give legal characteristics

to crimes and criminals (to subjects of a crime – M. P.) that is obligatory for criminology (23, P. 361). In the opinion of V. I. Kaminska, when a criminal-legal notion is used in procedural law, it cannot be assigned a different meaning in comparison with criminal law (16, P. 98–99). Just as R. S. Bielkin wrote, forensic science does not develop issues of criminal law but takes ready-made solutions of this science (24, P. 38).

The stated above gives grounds to assert that interdisciplinary categories, concepts, and terminology developed by criminal law science and used by other related sciences are of a rather high level of abstraction. They have basic essential features that define the essence of phenomena that are reflected in these concepts and therefore are not created, but are used («accumulated», «assimilated») by criminology, criminal process, forensics as data (existing). Therefore, these sciences, such as those that are in a relationship of subordination with the criminal law science, when using categories, concepts and terms belonging to the class of interdisciplinary and are the subject of criminal law science, should be based on the content and scope that the criminal law science puts into them.

However, the proposed approach is not widely shared among scholars. Some of them believe that each of the sciences of the criminal cycle, operating with notions that belong to the class of «interdisciplinary» and are the subject of criminal law science, can interpret them differently and put different meanings into them. For example, Yu. D. Bluvshtein, N. A. Dobrynin, S. G. Kurganov argue that criminologists can put *their own meaning* into criminal law concepts (25, P. 45, 26, P. 61–62). D. A. Shestakov believes that crime science, not being limited to the criminal law definition of crime, feels the need to develop its own criminological concept, more in line with its essence. He suggested that *in criminology, crime* should be understood as acts which constitute a significant evil for a person and society, irrespective of the recognition of such act as a crime in legislation (27, P. 80). Close views of this position (that contravenes the law on criminal liability – M. P.) were also expressed by other criminologists (28, P. 113–119). In criminology, G. G. Zuikov and I. Sh. Zhordaniia believe that criminal law, forensic science, criminology while studying the methods of crime, abstracting from its sides, which are indifferent to them, study *different concepts in terms of content* (italics are mine – M. P.) by means of which the same object is investigated (29, P. 54, 30, P. 91). Similar deviations take place in law-making when, while elaborating and adopting a regulatory legal act in a certain area, notions or terms of other sectoral affiliation are borrowed and used which are, however, not yet sufficiently developed by science and practice or those which this science «does not necessarily know» yet or which are only being discussed. In this respect, the shortcomings of the decision of the Verkhovna Rada of Ukraine when adopting the Criminal Procedural Code of Ukraine ((Law No. 4651-VI of 13.04.2012) further referred to as the CPC (entered into force on 20.11.2012)), which provides

for the features of pre-trial investigation (inquest) of *criminal offenses* (para. 7 part 1 of Article 3, Article 215, Article 298–302 of the CPC), draw attention. However, *it is clear that at that time the criminal law category «criminal offense» was not yet known to the criminal law of Ukraine* (it was only discussed in the scientific community) and therefore definitely could not be used in the CPC to resolve both criminal procedural and criminal law issues for legislative regulation of the inquest of a rather important area of the state's activity in the fight against crime. Only on 22 November 2018 the Law of Ukraine No. 2617-VIII «On Amendments to Certain Legislative Acts of Ukraine Concerning the Simplification of Pre-trial Investigation of Certain Categories of Criminal Offences» (which will come into force on 1 January 2020) determined this criminal category by introducing amendments and additions to the Criminal Code (part 1, part 2 of Article 12) and the CPC and thus the previously made error was corrected. Such negative practices in lawmaking are certainly extremely undesirable.

Analyzing the above-mentioned positions of scientists and lawmaking practice, it should be noted that the content of any concept, as it is known, forms a set of basic essential features of phenomena (objects) that make up the volume of the concept. Therefore, if following the above-mentioned judgments and practices, it is necessary to admit that each of the mentioned sciences can recognize different, even not essential, features of the same phenomena (objects) as significant. But such a solution is erroneous, because the essential signs forming the content of «interdisciplinary» notions reflecting the essence of the phenomena of real life, regardless of which of the sciences of the criminal cycle seeks to cognize it. Moreover, such an approach does not take into account the fundamental and determinant meaning of the criminal law science (which is based on the regulatory framework of criminal legislation) in relation to other sciences of the criminal cycle.

The stated above does not exclude the possibility of developing interdisciplinary categories, concepts, and terminology related to the conceptual apparatus of criminal law science in criminology, criminal procedure, and forensics. But the features that form the content of these categories, concepts, and terms in these related sciences should be derived from the main essential features of the conceptual apparatus of criminal law science. Therefore, these categories, notions, and terms in these sciences (criminology, forensic science, etc.) should be derived from the elements of the conceptual apparatus of criminal law. The peculiarity of these elements is that they characterize the phenomena of objective reality, taking into account the tasks faced by the said sciences and arising from the subject of their study.

The criminal law science, having a personal relatively coherent and complete system of categories, concepts and terminology, at the same time employs in a number of cases relevant elements of the conceptual apparatus of other applied sciences related to the criminal cycle and thus includes them in its con-

ceptual apparatus. Thus, the Special Part of Criminal Law uses the concepts of «arrest», «detention», «custody», «sentence», «decision», «court sentence», «witness», «interpreter» and other concepts related to the criminal process: «firearms», «edged weapons», etc., which are developed by forensic science. In many cases, forensics also relies on concepts that are developed by the science of the criminal process, as well as on theoretical provisions developed in criminology. Similarly, criminal procedure and criminology operate with the concepts and terms that are developed by forensic science. So, in all these cases there is an interpenetration of sciences (strongly emphasized integration), which is observed at the level of individual elements of their conceptual apparatus. And the use of each of these sciences concepts and terms related to adjacent branches of knowledge should not seem to be arbitrary. It is known that scientific concepts are subjective in nature of their formation, but objective in their origins, genesis, as a whole, are inextricably linked with the objective world and reflect it in generalized and essential features. Developing «own» concepts, each of the sciences of the criminal cycle clarifies the essence of the corresponding objective phenomena and anchors them in the concepts. Thus, the content of categories, notions, and terms of these sciences is ultimately determined by the objective world phenomena included in the subject of their study. Therefore, if a criminal cycle science includes in its conceptual apparatus the concepts and terms of related sciences that do not belong to the class of «interdisciplinary» notions, i.e., developed specifically not by the criminal law science, but by other sciences, then it should use them as data and proceed from the point of view that the relevant sciences invest in these concepts. A different solution would contradict the logic of scientific analysis, making it impossible to study the problems faced by each of the sciences of the criminal cycle, especially in areas where these sciences are closely linked to each other.

Conclusions. The provisions and suggestions on the correlation and interrelation of the conceptual apparatus of the criminal cycle sciences are of great importance both for the organization and conduct of scientific research in these sciences and for the solution of practical issues in the field of combating crime, in particular, in lawmaking and law enforcement activities. The defining dominating factor in this activity and the main goal in this regard should be to achieve coherence and consistency of the conceptual apparatus of criminal cycle sciences – their categories, concepts, and legal terminology, especially in situations where a branch of knowledge (science) uses certain elements of the conceptual apparatus of another. In such cases, the interpretation of the relevant categories of concepts and terms belonging to the class of «interdisciplinary» should be carried out on the above scientific principles. Proceeding from this, we believe it is unacceptable to have different definitions and interpretations of the same categories, concepts and legal

terms used in adjacent (related) but still different sciences of the criminal cycle, belonging to the class of «interdisciplinary». Their definition, in this case, is determined by their interpretation in criminal law. This is especially important in the sciences, the subjects of which include (as their legal framework) the relevant branches of legislation: criminal, criminal procedure, criminal enforcement. These legislative systems should be clearly coordinated while their conceptual apparatuses are logically coordinated, contradictions and different interpretations of the same categories, concepts and terms in these different (but related) areas of legislation are unacceptable.

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